

GUIDELINES

1

The Newsletter of the New Jersey Executive Commission on
Ethical Standards

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THE EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Chairwoman Linda Anselmini, Vice Chair Elizabeth Randall, Commissioner Arthur Eisdorfer, Commissioner Alisha Griffin, Commissioner Lonna Hooks, Commissioner Fred Lopez, Commissioner Alan Steinberg; Executive Director Rita L. Strmensky.

The cases presented in "Guidelines" are designed to provide State employees with examples of conflicts issues that have been addressed by the Executive Commission. Specific questions regarding a particular situation should be addressed directly to the Commission.

ACCEPTANCE OF GIFTS

Throughout the year, but especially now with the holiday season approaching, it is important that everyone bear in mind that all State employees are subject to the provisions of the New Jersey Conflicts of Interest Law and their departmental Codes of Ethics concerning the receipt of gifts and favors offered for the purpose of influencing them in the discharge of their official duties or creating the appearance of a violation of the public trust.

In accordance with the Conflicts of Interest Law, any gift or other thing of value offered by a person or entity with whom a State employee has had contact in his or her official capacity must be

declined, and the offer must be reported immediately to the departmental Ethics Liaison Officer.

Executive Order No. 189 prohibits any vendor to the State from offering any gift, gratuity, or other thing of value to any State officer or employee or special State officer or employee in any agency with which the vendor transacts business or offers or proposes to transact business. Executive Order No. 189 also prohibits any State employee from soliciting any gift, gratuity, or other thing of value from any State vendor.

Any holiday gift offered by a person or entity with whom a State employee has had contact in his or her official capacity,

an invitation to a party paid for by such an individual or entity, or tickets to events supplied by such an individual or entity must be declined. Questions concerning the receipt of gifts and favors in connection with State employment should be referred to the departmental Ethics Liaison Officer.

Proposed Attendance Rules

At its October 27, 1994 meeting, the Commission approved the publication and interim usage of the following attendance regulations. The regulations will be published in the New Jersey Register on December 5, 1994. The written comment period ends on January 5, 1995.

SUBCHAPTER 6. ATTENDANCE AT EVENTS, ACCEPTANCE OF HONORARIA, AND ACCEPTANCE OF COMPENSATION FOR PUBLISHED WORKS

19:61-6.1 Applicability.

The following rules apply to all State officials in the Executive branch of State government.

19:61-6.2 Definitions.

"Approval" for the purposes of *N.J.A.C.* 19:61-6.4 and 6.5 means written permission from the Department head to attend and/or participate in an event; to accept an honorarium or fee; and/or to accept direct or indirect benefits in connection with attendance.

"Commission" means the Executive Commission on Ethical Standards.

"Department head" means the administrative or executive head of the State official's agency or his/her designee.

"Direct benefit" means acceptance by a State official from the sponsor of an event or any other person of travel, refreshments, reasonable subsistence, waiver of conference or event fee or any other costs associated with attending the event for which no payment is made by the State.

"Event" means a meeting, conference, seminar, speaking engagement, symposium, training course, groundbreaking, ribbon-cutting, meal, open house, cocktail party, fundraiser, holiday party, social function, or similar event that takes place away from the State official's work location, and is sponsored or co-sponsored by a non-State government source.

"Indirect benefit" means acceptance by a State official from the event sponsor or any other person of reimbursement for costs of travel, refreshments, reasonable subsistence, event fees, or any other costs associated with attending the event for which no reimbursement is made by the State.

"Interested party" means: (1) any person, or employee, representative or agent thereof, who is or may reasonably be anticipated to be subject to the regulatory, licensing or oversight authority of the State official's agency; or (2) any supplier, or employee, representative or agent thereof; or (3) any organization that advocates or represents the positions of its members to the State official's agency; or (4) any organization a majority of whose members are as described in (1) through (3) of this section.

"Person" means any natural person, association, organization, firm, partnership or corporation.

"Personal funds" means funds of a State official. It does not include funds that are loaned, advanced, promised or reimbursed to a State official for any purpose by an interested party.

"Published work" means any tangible media of expression, including but not limited to literary, pictorial, graphic, and sculptural matter; sound recordings; and software.

"State official" means any State officer or employee or special State officer or employee as defined in the Conflicts of Interest Law, *N.J.S.A. 52:13D-13(b)* and (e).

"Supplier" means any private sector person that is providing or may reasonably be expected to provide goods and/or services to the State official's agency, including but not limited to consultants, vendors and lessors.

19:61-6.3 Granting of approval.

For the purposes of *N.J.A.C. 19:61-6.4* and 6.5, when a Department head grants permission to attend an event, the Department head shall determine whether a legitimate State purpose will be served by attendance and shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the guidelines and rules of the Commission, any departmental administrative policies and any other relevant considerations. Relevant

considerations include but are not limited to:

- a. The identity of the sponsor.
- b. The purpose of the event.
- c. The identity of other expected participants.
- d. Whether attendance/ participation in the event will assist the State official in carrying out his/her official duties and support the mission of the agency.
- e. The monetary value and character of the costs, benefits and/or honoraria provided by the sponsor including whether the costs, benefits and/or honoraria are comparable to those offered to or purchased by other attendees.

Approval shall be requested in writing on a form similar to that provided in *N.J.A.C. 19:61-6.7*. Such forms shall be maintained by the Department for a period of 5 years from the date of approval of the form.

19:61-6.4 Attendance at an event sponsored by an interested party.

- (a) The State official must secure the prior approval of the Department head to attend such an event.
- (b) The State shall pay the reasonable expenses of the State official associated with attending the event. Neither the State official nor the State shall receive any direct or indirect benefit from any other source. The State official may pay his/her own expenses with his/her personal funds.

(c) The State official shall not accept an honorarium or fee for a speech or presentation at an event covered by this section.

Examples

The Commissioner of Banking is asked, by the New Jersey Bankers Association, to attend their annual meeting in Hilton Head to address members on the subject of the effects of proposed banking regulations in New Jersey. The Association has offered to pay all travel and hotel expenses for the Commissioner. With proper approval, the Commissioner may attend the meeting; however, because the Department of Banking regulates the Association's members, the State or the Commissioner must pay the reasonable expenses of the trip and neither the State nor the Commissioner may accept any reimbursement or direct benefit from any other source. The Commissioner may not accept an honorarium or fee for his speech.

The Division of Motor Vehicles is considering the purchase of new pollution testing equipment. One of the companies that plans to submit a bid invites several Division employees to a demonstration of the equipment to be held at a hotel conference center. A seafood buffet will be served after the demonstration. With proper approval, the employees may attend the demonstration, but because the company plans to submit a bid to provide this equipment and is therefore a vendor to the Division, the employees may not partake of the seafood buffet at the expense of the vendor. The employees may, however, pay the cost of the buffet personally.

19:61-6.5 Attendance at an event sponsored by an entity other than an interested party.

(a) The State official must secure the prior approval of the Department head to attend such an event.

(b) The State official must not permit the use of his/her official title for the purpose of fundraising for a private organization.

(c) The State may pay the reasonable expenses of the State official associated with attending the event or may permit the State official to accept direct or indirect benefits. An interested party shall not provide a direct or indirect benefit to the State official in order to facilitate his/her attendance.

(d) A State official making a speech or presentation at the event may accept an honorarium or fee from the sponsor.

(e) Under no circumstances shall a State official accept entertainment collateral to the event or meals taken other than in a group setting with all attendees, or reimbursement therefor.

Examples

An employee of Travel and Tourism at the Department of Commerce has been invited, by the Mexican Tourist Bureau, to attend a series of meetings on promoting tourism in both countries. The employee will be giving a speech at a dinner on the final day of the meetings and has been offered a \$500 honorarium. With proper approval, the employee may attend the meetings and may accept an honorarium in connection with his speech. In addition, he may accept, directly or by reimbursement,

actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State.

A local non-profit organization would like to hold a dinner/fundraiser honoring a Technical Assistant at the Department of Insurance who has been a long-time supporter of the organization. The organization plans to use the Technical Assistant's picture, name and official title on the promotional literature. The Technical Assistant may attend the event but is prohibited from allowing such use of his official title for fundraising purposes.

19:61-6.6 Compensation for published work(s).

(a) A State official shall not accept compensation for published work(s) created as part of his/her official duties on State time utilizing State resources, but may accept compensation for published works not created as part of his/her official duties.

(b) A State official shall secure the permission of the Department head to accept compensation for published work(s) not created as part of his/her official duties. In determining whether such approval can be granted, the Department head shall consider the provisions of the Conflicts of Interest Law, the departmental code of ethics, any applicable Executive Orders, the Commission's *Guidelines for Secondary Employment*, any other applicable guidelines or rules of the Commission, any applicable departmental administrative policies, and the following conditions:

(i) Compensation shall not be from an interested party.

(ii) The published work(s) cannot use or disclose information not generally available to the public.

(iii) The State official must prepare the published work(s) on his/her own time without using the services of other State officials or resources owned by the State.

(iv) The State official may not use his/her official title in any way in soliciting compensation and must indicate that his/her views do not represent those of the State.

Examples

As part of his official duties, a Department of Transportation employee evaluates surveying equipment and trains Department employees on its use. The employee recently completed an in-depth evaluation of ten different types of surveying instruments and made a recommendation to the purchasing unit. The employee would like to publish the entire report in Transportation Magazine. He has been offered \$500 for the article. The Department must make a policy decision as to whether the article may be published. The employee is prohibited from accepting compensation for the article, even if the Department grants permission for the publication, since it was created as part of his official duties prepared on State time and utilizing State resources.

An Environmental Technician at the Department of Environmental Protection has been asked to write an article for an environmental journal on how New Jersey's automobile emission standards differ from those of Pennsylvania. He has

been offered \$500 for the article. So long as he prepares the article on his own time, at home, without using any State resources, the Environmental Technician is permitted to publish the article and receive compensation since it is on a subject matter related to, but not a part of, his official duties.

19:61-6.7 Sample Approval Request Form.

(Available from Department Ethics Liaison Officer.)

PARTICIPATION IN FUNDRAISING ACTIVITIES

At the October 27, 1994 meeting, the Commission reviewed the existing fundraising policy which prohibits the use of official title for private fundraising. This policy has been in effect since 1978. After reviewing the policies of other State ethics agencies and federal regulations on fundraising, the Commission affirmed its existing policy prohibiting the use of official title for private fundraising purposes. In reaffirming its earlier decision, the Commission noted that the prohibition does not extend to joint venture situations where the State is an actual participant in an event and the State officials are involved by virtue of the agency's participation. The Commission plans to review its Joint Venture Guidelines in the near future and address the issue of fundraising activities in that context.

COMMISSION CASE NO. 9-94

SUBJECT: Supervisor/Subordinate Relationships - Family Members.

FACTS: The State employee manages an office where his two cousins are employed. It was alleged that the manager exercised an unwarranted privilege in connection with the supervision of his relatives.

RULING: The Executive Commission dismissed the allegations against the manager since the staff investigation did not establish a factual basis for the allegations.

REASONING: Under Commission precedent, one family member cannot supervise another. The Commission has used the definition of family member provided in the statute, that is "the spouse, child, parent or sibling residing in the same household." Under Commission precedent, the supervision of the manager's cousins would not be prohibited absent indications that he exercised an unwarranted privilege in their supervision. The staff investigated all of the unwarranted privilege allegations, which were found to be without merit. In this particular case, it was determined that the manager had no involvement in the day-to-day supervision of his cousins at all. There was a middle-level supervisor who was responsible for work assignments and performance evaluations.

COMMISSION CASE NO. 11-94

SUBJECT: Impairment of objectivity/independence of judgment.

FACTS: The State employee had oversight responsibilities, mandated by the court, in his official capacity in connection with an organization of which he was a life member and former local Board member. The State employee also attended the or-

ganization's annual conventions and received expense money from the organization in connection with his attendance. The State employee's department was fully aware of his affiliation with the organization when he was assigned the oversight responsibility.

RULING: The Executive Commission ruled that the employee's affiliation with the organization and receipt of expenses from them, in light of his oversight responsibilities, were indicative of violations of the Conflicts Law. However, the Commission declined to prosecute the violations. The employee was required to reimburse the organization for expense money received during the oversight period.

REASONING: The Commission determined that the State employee's affiliation with the organization may have conflicted with or impaired his objectivity and independence of judgment in his oversight responsibilities in that his role did not, as the Department acknowledged, accomplish the review process mandated by the court. As to the appearance issue, the Commission determined that a member of the public could reasonably be expected to question the employee's objectivity since, during the time frame in question, he was attending the organization's conventions and receiving expense money.

In addition, under the Department's Code of Ethics, the employee is prohibited from accepting expenses from the organization since the organization is supervised by the Department.

Regarding "Guidelines"

Please direct any comments or questions about "Guidelines" to Jeanne A. Mayer, Esq., Deputy Director, Executive Commission on Ethical Standards, CN 082, Trenton, NJ 08625, (609)292-1892.